IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 2492 of 2007(V)

OS.773/2005 of I ADDL.M.C.,ERNAKULAM

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PETITIONER:

M/S.GOSRI CHIT FUNDS (P), A CO.REGISTERD UNDER THES COMPANIES ACT, 1956 HAVING ITS REG. OFFICE AT MARKET ROAD, ERNAKULAM, COCHIN-35, AND BRANCH AT FARAIDABA AND OTHER PLACES REP. BY ITS CHASIRMAN JOSE THOMAS, S/O.THOMAS, RESIDING AT MANAVALAN HOUSE, PULLEPPADY, KOCHI-18.

BY ADV. SRI.JIMMY JOHN VELLANIKARAN
SRI.JAYAPRAKASH. R

RESPONDENTS:

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1. MR. MOHAMED AFSAL, AGED 55 YEARS, S/O.H.H.MOHAMMED KASIM SAIT, XL/6507, KADEEJA MANSIONS, 2ND FLOOR, T.D. ROAD, COCHIN-35.

2. MRS. ZOHARE AFSAL, AGED 54 YEARS, W/O.MOHAMED AFSAL, XL/6507, KADEEJA MANSIONS, 2ND FLOOR, T.D.ROAD, COCHIN-35.

3. MR. G.M. ISMAIL SAIT, AGED 60 YEARS, S/O.H.E.GULMOHAMMED SAIT, AL-MANAR, 37/2026, AZAD ROAD, KALOOR, KOCHI-17.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/01/2007, HE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.2492 OF 2007

DATED THIS THE 22nd DAY OF JANUARY, 2007

JUDGMENT

Petitioner is plaintiff. Respondents are defendants in O.S.773/05 on the file of Munsiff Court, Ernakulam. Respondents were exparte. When evidence was recorded, petitioner sought to mark Ext.P1 agreement executed by defendants in favour of petitioner.

2. Learned Munsiff under Ext.P2 order, held that stamp duty is to be paid as provided under Article 19 of Kerala Stamp Act and directed petitioner to pay deficit stamp duty and penalty and on failure, directed to send it to District Collector after impounding. This petition is filed under Article 227 of Constitution of India challenging Ext.P2 order.

3. Learned Counsel appearing for petitioner was heard.

4. Article 19 of Kerala Stamp Act provides the stamp duty payable for chitty or kuri, where the total amount exceeds Rs.100/-. Section 2(14) of Kerala Chitties Act defines variyola as means the document containing the articles of agreement between the foreman and the subscribers relating to the chitty and includes vaimpu and kurippattika or other similar instrument. Ext.P1 is not a chitty or kuri

variyola as contemplated under Sub Section 14 of Section 2 of Kerala Chitties Act. Though chitti conducted by petitioner is not governed by provisions of Kerala Chitties Act, the said definition is applicable and can be looked into as guideline.

Ext.P1, agreement was executed by respondents at the time of prizing the chiity and receiving the prized money. It cannot be treated as a chitty or kuri Variyola as provided under Article 19 of Kerala Stamp Act. It could only be treated as an agreement. Stamp duty is not payable under Article 19 of Kerala Stamp Act. Therefore Ext.P3 order is quashed.

M.SASIDHARAN NAMBIAR,JUDGE

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